8-2-2016

State v. Cruz Appellant's Brief 1 Dckt. 43486

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 43486**
Plaintiff-Respondent,	)	
	)	**MINIDOKA COUNTY**
v.	)	**NO. CR 2013-2413**
	)	
CHRISTOPHER CRUZ,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
_____	)	

_____

BRIEF OF APPELLANT

_____

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

_____

HONORABLE MICHAEL R. CRABTREE
District Judge

_____

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STATEMENT OF THE CASE

Nature of the Case

The State charged twenty-four-year-old Christopher Cruz with one count of first-degree murder and one count of attempted first-degree murder. The State later filed a motion in limine requesting the district court rule Mr. Cruz's statements in certain jail telephone conversations were admissible. After conducting a hearing, the district court determined the seven phone conversation excerpts requested by the State were admissible. Mr. Cruz subsequently entered into a conditional plea agreement and pleaded guilty to amended charges of one count of second-degree murder. The conditional plea reserved Mr. Cruz's right to appeal the district court's decisions made before the plea. The district court imposed a unified sentence of forty years, with eighteen years fixed.

On appeal, Mr. Cruz asserts the district court abused its discretion when it allowed the admission of two of the phone conversation excerpts from the State's motion in limine.

Statement of the Facts and Course of Proceedings

When Mr. Cruz was at his home in Heyburn, Jared McNeil and Craig Short arrived there by car. (Supp. R., p.13.)[1] While in or near the garage, Mr. Cruz shot Mr. Short three times with a pistol, and Mr. Short died. (Supp. R., p.13.) Mr. McNeil witnessed the shooting. (Supp. R., p.13.) Mr. Cruz tried to prevent Mr. McNeil from leaving, but Mr. McNeil eventually left. (Supp. R., p.13.) Mr. Cruz and his girlfriend,

[1] All citations to the "Supp. R." refer to the 120-page PDF electronic version of the Supplemental Record.

Stephanie Juarez, fled to Texas. (Supp. R., p.13.) They were later taken into custody and returned to Idaho. (Supp. R., p.13.) In a police interview, Mr. Cruz reported he had consumed methamphetamine and acid the morning of the incident. (*See* State's Ex. 35 (transcript of Oct. 13, 2013 interview), p.37, Ls.1-9.) In a subsequent interview with detectives, Mr. Cruz stated he "woke up a little bit paralyzed." (State's Ex. 35, p.37, Ls.11-13.)

Later, during the presentence investigation, Mr. Cruz stated he had been sleeping in his bedroom that day, when he was awakened by a loud noise. (Supp. R., p.14.) He saw a person, later identified as Mr. Short, stumble into his bedroom. (Supp. R., p.14.) Mr. Cruz quickly got up and retrieved a pistol from his dresser. (Supp. R., p.14.) Mr. Short then ran out to the garage, and Mr. Cruz ran after him. (Supp. R., p.14.) When Mr. Cruz reached the garage, he fired the pistol at Mr. Short, who was running outside. (Supp. R., p.14.) Mr. Short stopped at the driver's side door of the car and turned around. (Supp. R., p.14.) Mr. Cruz fired the pistol until it ran out of bullets. (Supp. R., p.14.) Mr. Cruz then saw Mr. McNeil and asked him for help. (Supp. R., p.14.) Although Mr. Cruz attempted to make him stay, Mr. McNeil ran away. (Supp. R., p.14.)

Conversely, in the preliminary hearing in this case, Mr. McNeil testified he and Mr. Short went to Mr. Cruz's home to pick up a bag of clothing. (Supp. R., p.13.) While Mr. Short waited outside the home, Mr. Cruz met Mr. McNeil and let him in to get the bag of clothing. (Supp. R., p.13.) When Mr. McNeil walked out, he noticed a speaker in the garage that belonged to him and told Mr. Cruz he was going to take the speaker. (Supp. R., p.13.) Mr. Cruz stated that was fine. (Supp. R., p.13.) Mr. McNeil took the

speaker out to the car, and he heard a gunshot as he was moving items in the car to make room for the speaker. (Supp. R., p.13). Mr. McNeil looked up and saw Mr. Cruz shoot Mr. Short multiple times with a pistol. (Supp. R., p.13.) Mr. McNeil testified Mr. Cruz then pointed the pistol at him and tried to shoot, but the pistol was out of bullets. (Supp. R., p.13.) Despite Mr. Cruz's attempts to stop him, Mr. McNeil ran away. (Supp. R., p.14.)

The State charged Mr. Cruz by Information with one count of first-degree murder, felony, Idaho Code §§ 18-4001, 18-4002 and 18-4003, one count of attempted first-degree murder, felony, I.C. §§ 18-4001, 18-4002, 18-4003 and 18-306, and a deadly weapon sentencing enhancement pursuant to I.C. § 19-2520. (R., pp.74-79; *see* R., pp.177-82.) Mr. Cruz entered a not guilty plea to all counts. (R., pp.89-90.)

The State later filed a motion in limine, requesting the district court determine Mr. Cruz's statements in certain jail telephone conversations were admissible into evidence pursuant to Idaho Rule of Evidence 801(d)(2) as statements made by a party-opponent. (R., pp.208-10.) The State ultimately requested the district court determine statements in seven excerpts from Mr. Cruz's phone conversations were admissible under Rule 801(d)(2). (R., pp.278-80; *see* R., pp.240-42.)

Mr. Cruz filed an objection to the State's motion in limine. (R., pp.218-22.) Among his arguments, Mr. Cruz asserted if the statements were determined to be relevant, they were unduly prejudicial. (R., pp.220-21.)

At a hearing the district court conducted on the State's motion in limine, the district court addressed Excerpt No. 4 from Mr. Cruz's jail telephone conversations, which was as follows:

> Christopher Cruz: I know what happened too.
>
> Christina Cruz [Mr. Cruz's mother]: Well, I don't believe you were there by yourself. The whole world believes what I believe, and that's because they know you. You're sticking up for somebody, and I think that's bullshit.
>
> Christopher Cruz: Well, wait until you see the evidence. Wait till you see what kind of monster I am deep down inside.
>
> Christina Cruz: You are not a monster. Did you hear me?

(Tr. D-1699, Oct. 23, 2013, p.8, Ls.3-13; *see* Tr., Dec. 5, 2014, p.40, Ls.1-11; R., p.328.)[2]

The State argued the above "basically is Mr. Cruz characterizing his actions based on the evidence that will be presented that he thinks will be presented at the time of trial." (Tr., Dec. 5, 2014, p.40, Ls.16-20.) The State further argued Mr. Cruz was characterizing "his consciousness of guilt and talking directly about the evidence to his mother . . . ." (Tr., Dec. 5, 2014, p.40, Ls.21-24.)

Regarding excerpt No. 4, Mr. Cruz's defense counsel was concerned with unfair prejudice: "Mr. Cruz stating that he is a monster, we have grave concerns that if a jury hears that, they are going to automatically convict. They are going to conclude that the charge of first degree murder is true and accurate, which we don't believe it is." (Tr., Dec. 5, 2014, p.41, Ls.6-13.) After asserting the statement was not relevant, defense counsel asked, "[a]re we going to have a conviction based on statement rather than evidence, Your Honor? So we would, as strong as possible, object to that of unfair

[2] At the hearing, the State explained the program it used to print the jail telephone conversation transcripts set off the pagination, meaning there was confusion about the page numbers. (Tr., Dec. 5, 2014, p.34, Ls.5-15.) Like the district court (*e.g.*, Tr., Dec. 5, 2014, p.29, L.21 – p.30, L.15, p.33, Ls.18-33), this brief will refer to the page numbers at the center bottom of the pages in the phone conversation transcripts.

prejudice." (Tr., Dec. 5, 2014, p.41, Ls.15-22.) Defense counsel further asserted, "[a]nd if my client's going to be convicted, we would like to see it be done on the evidence and not that statement, Your Honor." (Tr., Dec. 5, 2014, p.41, Ls.23-25.)

The district court determined Excerpt No. 4 was relevant. (*See* Tr., Dec. 5, 2014, p.42, Ls.2-4.) While the district court stated "it does run the risk of being unfairly prejudicial because it could be just an offhand comment," the district court then determined "[t]he real gist of this proffer from the state is that at line 9 and line 10 where Mr. Cruz states, 'Well, wait until you see the evidence.' That is the real essence of this." (Tr., Dec. 5, 2014, p.42, Ls.8-13.) The district court determined Mr. Cruz's "characterization of the evidence is less important, although it does show his, or it may be argued that it shows his, consciousness of the magnitude of his conduct." (Tr., Dec. 5, 2014, p.42, Ls.13-17.) The district court thought "on balance, it is prejudicial, but I don't think it's unfairly prejudicial. It is his own statement, and so the state may present this segment which we've marked as No. 4 as presented." (Tr., Dec. 5, 2014, p.42, Ls.18-21; *see* R. p.328.)

The district court also addressed Excerpt No. 6 from Mr. Cruz's jail telephone conversations, which was as follows:

> Christopher Cruz: . . . [T]here's a lot of inconsistencies with me too. Well, I pretty much said pretty much the truth, but I justified all my actions. Like, I said I was under the influence at first, but they have my blood anyway, so they could do the test that I wasn't on methamphetamines, or I didn't have it in my blood system or other different types of drugs besides THC. But I admitted to that, I smoke pot every now and then sometimes. It's no big deal.

(Tr. D-1705, Nov. 21, 2013, p.6, L.6 – p.7, L.14; *see* Tr., Dec. 5, 2014, p.45, L.13 – p.46, L.2, R., p.329.)

The State argued Mr. Cruz was "specifically speaking about the incident. He is specifically speaking about how he lied to justify his actions. How he wasn't originally on drugs or he wasn't on drugs during the murder. And he is stating he wasn't on drugs during the murder." (Tr., Dec. 5, 2014, p.46, Ls.9-14.)

Mr. Cruz objected on the basis of "relevance [and] unfair prejudice." (Tr., Dec. 5, 2014, p.46, L.21.) Additionally, Mr. Cruz's defense counsel raised concerns regarding the "last two sentences about the possible drug use, again, I think the Court has to look at [Rule] 404(b). If he is going to be convicted, it needs to be what is presented and not for allegations or his statements that he recreationally used marijuana every now and then." (Tr., Dec. 5, 2014, p.46, L.24 – p.47, L.2.) Defense counsel asserted "that statement should be stricken." (Tr., Dec. 5, 2014, p.47, Ls.2-4.)

Defense counsel further asserted that if Mr. Cruz "testified or told the detective this information, the detective should be the one testifying, not this, Your Honor." (Tr., Dec. 5, 2014, p.47, Ls.5-7.) In response to the district court's questions, the State related that Mr. Cruz, in an interview with the detectives, "stated that he was high on acid, and then he took a needle of meth and shot up and got even higher so he was at a paralyzed state I believe he stated." (Tr., Dec. 5, 2014, p.47, Ls.8-16.) The State also answered that Excerpt No. 6 would directly contradict what Mr. Cruz told the detectives in the interview. (Tr., Dec. 5, 2014, p.47, Ls.17-20.)

The district court then determined Excerpt No. 6 was relevant. (Tr., Dec. 5, 2014, p.47, Ls.22-25.) The district court also determined "it is prejudicial, but not unduly prejudicial. They are statements made both in this instance and in the interview with the detectives by the defendant and they relate to his statements that appear to have been

offered initially in the interview with the detectives as justification regarding his conduct or his alleged conduct." (Tr., Dec. 5, 2014, p.47, L.25 – p.48, L.7.) Thus, the district court determined "No. 6 is admissible, and will be able to be presented to the jury if the state wishes to do so." (Tr., Dec. 5, 2014, p.48, Ls.8-10; *see* R., p.329.)

Additionally, the district court determined the other five jail telephone conversation excerpts were admissible because they were relevant and their probative value was not outweighed by the danger of unfair prejudice. (R., pp.326-30.)

Pursuant to a conditional plea agreement, Mr. Cruz later agreed to plead guilty to amended charges of one count of second-degree murder, felony, I.C. §§ 18-4001, 18-4002 and 18-4003. (R., pp.331-50.) The State agreed to dismiss the attempted first-degree murder count and the deadly weapon sentencing enhancement. (R., p.340.) Mr. Cruz reserved his "right to appeal any decisions of trial court made prior to entry of plea." (R., p.341.) The district court later imposed a unified sentence of forty years, with eighteen years fixed. (R., pp.413-15.)

Mr. Cruz filed a Notice of Appeal timely from the district court's Judgment of Conviction and Order of Commitment. (R., pp.421-24.)

Mr. Cruz also filed a Motion to Reconsider Sentence Pursuant to Idaho Criminal Rule 35. (Supp. R., pp.19-32.) The district court entered an Order Denying the Defendant's Motion to Reconsider Sentence Pursuant to Idaho Criminal Rule 35. (Supp. R., pp.12-18.) On appeal, Mr. Cruz does not challenge the district court's denial of his Rule 35 motion.

ISSUE

Did the district court abuse its discretion when it allowed the admission of Excerpt No. 4 and Excerpt No. 6?

ARGUMENT

The District Court Abused Its Discretion When It Allowed The Admission Of Excerpt No. 4 And Excerpt No. 6

A. Introduction

Mr. Cruz asserts the district court abused its discretion when it allowed the admission of Excerpt No. 4 and Excerpt No. 6, because it did not act consistently with the applicable legal standards. The district court abused its discretion when it allowed Excerpt No. 4, because the danger of unfair prejudice from Mr. Cruz's characterization of himself as a "monster" substantially outweighed the statement's probative value under Idaho Rule of Evidence 403. The district court abused its discretion when it allowed Excerpt No. 6, because it did not articulate a non-propensity purpose for the admission of the statements on Mr. Cruz's other acts of drug use under Idaho Rule of Evidence 404(b). Thus, the district court's order allowing the admission of the jail telephone conversation excerpts should be reversed with respect to Excerpt No. 4 and Excerpt No. 6, Mr. Cruz's judgment of conviction should be vacated, and the case should be remanded to the district court.

B. Standard Of Review And Applicable Law

A district court has broad discretion when ruling on a motion in limine, and an appellate court reviews the district court's decision to grant or deny a motion in limine for abuse of discretion. *State v. Richardson*, 156 Idaho 524, 528 (2014). When a district court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the district court correctly perceived the issue as one of discretion; (2) whether the district court acted within the

boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the district court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989).

In its motion in limine, the State sought to admit Mr. Cruz's statements in Excerpt No. 4 and Excerpt No. 6 as statements of a party-opponent under Idaho Rule of Evidence 801(d)(2). (*E.g,*, R., pp.278-79.) Statements of a party-opponent are not hearsay. I.R.E. 801(d)(2)(A). But nonhearsay evidence, like statements of a party-opponent, "may be excluded on other grounds, such as if [it] constitutes propensity evidence under I.R.E. 404(b)." *See Cook v. State*, 157 Idaho 775, 779 (Ct. App. 2014).

Relevant evidence is generally admissible. I.R.E. 402. Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. I.R.E. 401. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. I.R.E. 403; *State v. Grist*, 147 Idaho 49, 52 (2009). An appellate court reviews a Rule 403 balancing determination by the district court for an abuse of discretion. *Grist*, 147 Idaho at 52.

Additionally, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person to show action in conformity therewith, but may be admissible for other purposes. I.R.E. 404(b). Admissibility of other acts evidence when offered for a permitted purpose is subject to a two-tiered analysis. *Grist*, 147 Idaho at 52. First, the district court must determine whether there is sufficient evidence to establish the other act as fact. *Id.* The district court must also determine if the fact, if established,

would be relevant to a material and disputed issue concerning the crime charged, other than propensity. *Id.* Second, the district court must engage in a Rule 403 balancing and determine whether the danger of unfair prejudice substantially outweighs the probative value of the evidence. *Id.* As discussed above, this balancing is committed to the discretion of the district court. *Id.* The district court must determine each of these considerations of admissibility on a case-by-case basis. *Id.*

C. The District Court Abused Its Discretion When It Allowed Excerpt No. 4, Because Under Rule 403 The Danger Of Unfair Prejudice Substantially Outweighed The Statement's Probative Value

Mr. Cruz asserts the district court abused its discretion when it allowed the admission of Excerpt No. 4, because under Idaho Rule of Evidence 403 the danger of unfair prejudice from Mr. Cruz's characterization of himself as a "monster" substantially outweighed the statement's probative value.

Excerpt No. 4 included Mr. Cruz's statement: "Well, wait until you see the evidence. Wait till you see what kind of monster I am deep down inside." (Tr., D-1699, p.8, Ls.9-11.) Although Mr. Cruz raised concerns with unfair prejudice (Tr., Dec. 5, 2014, p.41, Ls.6-25), and the district court initially noted "it does run the risk of being unfairly prejudicial because it could be just an offhand comment," (Tr., Dec. 5, 2014, p.42, Ls.8-10), the district court ultimately determined "on balance, it is prejudicial, but I don't think it's unfairly prejudicial." (Tr., Dec. 5, 2014, p.42, Ls.18-20.) However, the danger of unfair prejudice from the statement substantially outweighed the statement's probative value.

As explained above, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. I.R.E. 403. The Idaho

Supreme Court has held that "[t]he fact that evidence may cause an emotional reaction in the jury does not automatically lead to the conclusion that the evidence should be excluded." *State v. Ellington*, 151 Idaho 53, 67 (2011). The proper focus of the district court is not upon merely prejudicial evidence but upon unfair prejudice; "whether fact to be shown by the evidence justifies the tendency of the evidence to persuade by illegitimate means." *State v. Rhoades*, 119 Idaho 594, 604 (1991) (internal quotation marks omitted). Thus, "evidence should be excluded if it invites inordinate appeal to lines of reasoning outside of the evidence or emotions which are irrelevant to the decision making process." *Id.*

Here, the probative value of Mr. Cruz's statement characterizing himself as a "monster" was substantially outweighed by the danger of unfair prejudice, because it invited inordinate appeal to lines of reasoning outside of the evidence and to emotions which are irrelevant to the decision making process. *See id.* As Mr. Cruz's defense counsel asserted, if the jury heard the statement, "they are going to automatically convict." (*See* Tr., Dec. 5, 2014, p.41, Ls.9-11.) The statement would prompt the jury to convict Mr. Cruz on his self-description, not on the evidence presented by the State. (*See* Tr., Dec. 5, 2014, p.41, Ls.11-13, 19-20.) Thus, even though the statement may have been relevant to Mr. Cruz's characterization of the evidence and consciousness of guilt (*see* Tr., Dec. 5, 2014, p.42, Ls.4-17), on balance the facts to be shown by the statement did not justify the tendency of the statement to persuade by illegitimate means. *Cf. Rhoades*, 119 Idaho at 604.

The probative value of Mr. Cruz's statement characterizing himself as a "monster" was substantially outweighed by the danger of unfair prejudice. *See* I.R.E.

403. Thus, the district court abused its discretion when it allowed the admission of Excerpt No. 4, because it did not act consistently with the applicable legal standards. *See Hedger*, 115 Idaho at 600.

D. The District Court Abused Its Discretion When It Allowed Excerpt No. 6, Because It Did Not Articulate Under Rule 404(b) A Non-Propensity Purpose For The Admission Of The Statements On Mr. Cruz's Other Acts Of Drug Use

Mr. Cruz asserts the district court abused its discretion when it allowed the admission of Excerpt No. 6, because it did not articulate under Idaho Rule of Evidence 404(b) a non-propensity purpose for the admission of the statements on Mr. Cruz's other acts of drug use.

Excerpt No. 6 included Mr. Cruz's statement that he admitted to having THC in his blood system, followed by: "I smoke pot every now and then sometimes. It's no big deal." (Tr., D-1705, p.7, Ls.11-14.) At the hearing on the State's motion in limine, Mr. Cruz asserted the district court had to look at Rule 404(b) with respect to those two statements. (Tr., Dec. 5, 2014, p.46, Ls.21-24.) However, the district court determined the entirety of Excerpt No. 6 was admissible, without striking the statements as Mr. Cruz had requested. (*See* Tr., Dec. 5, 2014, p.47, L.22 – p.48, L.10.) Further, the district court did not articulate under Rule 404(b) a non-propensity purpose for the admission of the statements on Mr. Cruz's other acts of drug use. (*See* Tr., Dec. 5, 2014, p.47, L.22 – p.48, L.10; R., p.328.)

As a preliminary matter, evidence of Mr. Cruz's other acts of drug use, because it implicated Mr. Cruz's character and was not intrinsic to the crimes charged, was subject to the strictures of Rule 404(b). *See State v. Whitaker*, 152 Idaho 945, 949 (Ct. App.

2012). Thus, the district court needed to conduct a full Rule 404(b) admissibility analysis on the other acts of drug use statements. *See Grist*, 147 Idaho at 52.

For the second step of the first tier in the Rule 404(b) admissibility analysis—the determination that the other act would be relevant—the trial court must articulate the purpose or purposes, other than propensity, for admission of the evidence. In *Grist*, the Idaho Supreme Court held that the district court, when it admitted other acts evidence, did not "articulate whether the evidence was probative because it demonstrated the existence of a common scheme or plan or because it tended to otherwise corroborate [a complaining witness'] testimony."[3] *Grist*, 147 Idaho at 53. Because "trial courts must carefully scrutinize evidence offered as 'corroboration' or as demonstrating a 'common scheme or plan' in order to avoid the erroneous introduction of evidence that is merely probative of the defendant's propensity to engage in criminal behavior," the *Grist* Court vacated the judgment of conviction and remanded the case for a new trial. *Id.*; *cf. State v. Marks*, 156 Idaho 559, 565 (Ct. App. 2014) ("Here, the district court identified the purposes, permissible under Rule 404(b), for which it found the evidence relevant.")

Because the district court in this case did not articulate a non-propensity purpose for admission of the statements on Mr. Cruz's other acts of drug use, the district court did not satisfy the second step of the first tier in the Rule 404(b) admissibility analysis. *See Grist*, 147 Idaho at 53; *see also State v. Sheldon*, 145 Idaho 225, 230 (2008) (holding, with respect to the notice requirement of Rule 404(b), that "compliance with I.R.E. 404(b) is mandatory and a condition precedent to admission of other acts

[3] The district court in *Grist* also "did not determine whether there was sufficient evidence to establish as fact [the defendant's] prior uncharged sexual misconduct . . . ." *Grist*, 147 Idaho at 53.

evidence"). Thus, the district court abused its discretion when it allowed the admission of Excerpt No. 6, because it did not act consistently with the applicable legal standards. *See Hedger*, 115 Idaho at 600.

CONCLUSION

For the above reasons, Mr. Cruz respectfully requests this Court reverse the district court's order allowing the admission of the jail telephone conversation excerpts with respect to Excerpt No. 4 and Excerpt No. 6, vacate Mr. Cruz's judgment of conviction, and remand the case to the district court for further proceedings.

DATED this 2nd day of August, 2016.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of August, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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